



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1445 ROSS AVENUE, SUITE 1200
DALLAS, TX 75202-2733

AUG 25 1995

NOTICE OF POTENTIAL LIABILITY AND EPA CONDUCT OF REMOVAL ACTION
URGENT LEGAL MATTER - PROMPT REPLY NECESSARY
VIA OVERNIGHT DELIVERY

The Prentice-Hall Corporation Systems, Inc.
Registered Agent for
NL Industries, Inc.
15 Columbus Circle
New York, NY 10023-7773

**Re: Tar Creek Superfund Site; Ottawa County, Oklahoma; Removal
Action for High Access Areas contaminated with lead and
cadmium**

Dear Sir or Madam:

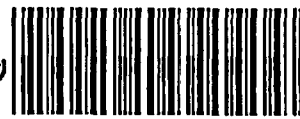
This letter has two purposes. First, this is to notify you that the U.S. Environmental Protection Agency (EPA) will conduct a removal action to address high levels of lead and cadmium contamination at certain parts of the Tar Creek Superfund Site (the "Site") in Ottawa County, Oklahoma. Second, this is to request that you notify EPA whether or not you are willing to enter into an agreement with EPA which provides that you will conduct or finance the removal action at the Site.

BACKGROUND

The Site includes an undefined area of approximately 40 square miles in Ottawa County, Oklahoma which is on or about the mined area shown as the shaded area on the map which is an attachment to Enclosure 1 to this letter. The Site includes, but is not limited to, the Oklahoma portion of a former lead and zinc mining area (Picher Field), and any area where a hazardous substance from mining in Ottawa County has been deposited, stored, disposed of, placed, or otherwise come to be located.

In 1984, EPA issued a Record of Decision (ROD) memorializing its decision for the remediation of the hazardous substance contamination at the Tar Creek Superfund Site. At the time that the 1984 ROD was written, EPA believed that the remedy in the ROD would be protective of human health and the environment at the Site in general. In April 1994, pursuant to Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Section 121(c), 42 U.S.C. § 9621(c), EPA published a report of the Five-Year Review of the remedial action undertaken pursuant to the 1984 ROD in order to assure that human health and the environment at the Site in general were being protected by the remedial action being implemented. New information gathered

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during the Five-Year Review, including without limitation information regarding elevated levels of lead in the blood of children living on the Site, led EPA to the conclusion that additional investigations of the effect of Site mining wastes (specifically tailings) on human health were necessary. Based upon this new information, beginning on May 1, 1994, EPA began new investigations at the Site. Based upon more new information uncovered during those investigations, EPA has determined that a removal action addressing the lead and cadmium contamination at certain high access areas at the Site, including without limitation children's playgrounds, is necessary to abate an imminent and substantial endangerment to the public health, welfare, or the environment that may be presented by the actual or threatened release of lead and cadmium from tailings deposited at the Site.

NOTICE

EPA has determined that the hazardous substances lead and cadmium have been released or that there is a substantial threat of such a release into the environment in certain high access areas including without limitation children's playgrounds at the Site. On August 15, 1995, EPA executed an Action Memorandum (copy enclosed) which memorializes the actions which EPA intends to take at the Site to address the lead and cadmium contamination in these areas pursuant to its authority under Section 104 of CERCLA, 42 U.S.C. § 9604. The removal action, described in the Action Memorandum dated August 15, 1995, involves the removal, and disposal, of lead- and cadmium-contaminated soil in the high access areas including without limitation children's playgrounds.

Under Section 107 of CERCLA, 42 U.S.C. § 9607, responsible parties are those persons who are current owners or operators of the Site; past owners or operators who owned or operated the Site at the time hazardous substances were disposed of at the Site; persons who arranged for disposal or treatment of hazardous substances at the Site (usually the person(s) who generated the hazardous substances); or persons who selected the Site for disposal and transported the hazardous substances to the Site. Section 107 of CERCLA also states that responsible parties are liable to the United States for the costs incurred by the United States in a removal action such as that being proposed for the Site. Under Section 106 of CERCLA, 42 U.S.C. § 9606, potentially responsible parties may be obligated to implement response actions deemed necessary by EPA to protect human health, welfare or the environment. EPA may issue an administrative order pursuant to Section 106 of CERCLA to require potentially responsible parties to commence cleanup activities. Failure to comply with an administrative order issued under Section 106 of CERCLA may result in a fine of up to \$25,000 per day, or imposition of treble damages, under Section 107.

The information available to EPA indicates that you owned parts of the Site or operated at the Site at the time that tailings containing the hazardous substances lead and cadmium were disposed of at the Site including the parts of the Site owned or operated by you; or that you arranged for the disposal of tailings containing the hazardous substances lead and cadmium at the Site. EPA's investigations regarding transportation of lead- and cadmium-contaminated tailings to the high access areas where the removal is to take place are ongoing. However, you deposited millions of tons of tailings at the Site, and EPA has been told that commercial gravel companies and certain other individuals hauled lead- and cadmium-contaminated tailings from various locations on the Site to other locations on the Site to serve as fill, to be used as driveway or roadbed material, and to serve the miscellaneous other functions for which gravel is typically used. Lead- and cadmium-contaminated tailings were hauled to or originally placed at the high access areas at which EPA intends to conduct its Removal Action. Consequently, it is possible that some of the lead- and cadmium-contaminated tailings attributable to your former operations or disposal activity may have come to be located at the parts of the Site at which EPA intends to conduct the removal action. Therefore, EPA is offering you the opportunity to demonstrate that you are able and willing to take over the removal action properly and promptly. If you choose not to perform this work, and if you are found to be a responsible party, you may be required to reimburse the United States for the funds expended in connection with this Site, and, in addition, you may be subject to civil administrative enforcement actions directing you to perform the removal action.

NEGOTIATIONS

Section 122(a) of CERCLA, 42 U.S.C. § 9622(a), requires EPA to notify potentially responsible parties if EPA decides not to use the settlement procedures in Section 122. EPA has decided not to use those settlement procedures in this case. It is EPA's policy not to use those procedures for removal actions unless there is expected to be at least six months of planning between the time the decision is made to conduct the removal action and the time the work is to begin. Since there is to be less than six months of planning for this work, the settlement procedures will not be used. However, if you are interested in conducting the work, EPA can take up to fourteen calendar days from the date of this letter to negotiate with you.

A draft Administrative Order on Consent (AOC), written specifically for the removal action at the Site with a draft Statement of Work (SOW) for the removal action attached to it, is enclosed. To expedite EPA's review of any offer to conduct or finance the removal action, EPA recommends that any revision of the draft AOC or draft SOW be presented to EPA with the deleted

portions lined through and your proposed language added in a distinctive manner. If you use Wordperfect 5.1 (which is used by EPA), or other word processing equipment, please submit a redline/strikeout version. A computer disk containing copies of these drafts will be furnished upon request.

To facilitate the process, EPA also suggests that a meeting be scheduled for 9:00 a.m. on September 1, 1995, at the EPA Regional Office located at 1445 Ross Avenue, Dallas, Texas. The purpose of the meeting is to provide the opportunity for EPA, and the parties notified to discuss the Site and to begin negotiating an agreement based upon the enclosed draft AOC with the draft SOW attached to it. You should contact EPA by August 30, 1995, to indicate your intent to attend this meeting.

EPA recommends that you and any other parties interested in negotiating a settlement with EPA meet to select a steering committee responsible for representing the group's interests. Establishing a manageable group is critical for successful negotiations with EPA. Alternatively, EPA encourages each party to select one person who will represent its interests. In order to facilitate formation of a manageable group for negotiations, EPA has included a list of parties (Attachment 1 of the draft AOC) to whom this letter has been sent.

YOUR RESPONSE TO EPA

You should notify EPA, in writing, within five calendar days of your receipt of this letter to indicate your willingness to participate in negotiations (whether or not you are able to attend the September 1, 1995, meeting), either individually or in conjunction with other parties. If you decide to perform this removal action, you will be required to enter into an AOC with EPA. If EPA does not receive your response within the specified time, it will be assumed that you do not intend to finance or perform the removal action as specified in the draft SOW.

Your written response should be forwarded to Remedial Project Manager Noel Bennett at the following address:

Noel Bennett
U.S. Environmental Protection Agency
Region 6
Superfund Division (6SF-AO)
1445 Ross Avenue
Dallas, Texas 75202-2733
Telephone: (214) 665-8514
Telefacsimile: (214) 665-6660

If you or your attorney have any questions pertaining to this matter, please direct them to:

James E. Costello
U.S. Environmental Protection Agency
Region 6
Office of Regional Counsel (6SF-DL)
1445 Ross Avenue
Dallas, Texas 75202-2733
Telephone: (214) 665-8045
Telefacsimile: (214) 665-6460

The factual and legal discussions contained in this letter are intended solely for notification and information purposes. They are not intended to be, and cannot be relied upon, as final EPA positions on any matter set forth herein.

Sincerely yours,



Myron O. Knudson
Director
Superfund Division

Enclosures

cc: Mark Coleman, Executive Director
Oklahoma Department of Environmental Quality

Monty Elder, Environmental Specialist Supervisor
Oklahoma Department of Environmental Quality

Grace Goodeagle
Quapaw Tribe of Oklahoma

Gary D. Uphoff, Principal
Environmental Management Services Company

Marcus Martin, Esq.
Counsel for NL Industries, Inc.